

Legislative Update:

Protecting Vulnerable Adults from Financial
Exploitation in the Banking and Securities
Industry

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NEBRASKA

Good Life. Great Opportunity.
Department of Banking and Finance

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How common is financial exploitation?

- Virtually all countries are expected to see substantial growth in the number of older persons between 2015 and 2030. (*United Nations Division for Social Policy and Development Ageing, 2017*)
- Seniors are living longer, but not necessarily better. Alzheimer's disease, dementia and declining cognitive and physical functioning make elders more vulnerable to victimization.
- One in 10 Americans age 60+ is a victim of elder abuse, neglect or exploitation (*National Council on Aging, 2017*).
- Only one in every 23.5 cases of elder abuse is reported to any agency (*Lachs, Mark, Et al. (2011) Under the Radar: New York State Elder Abuse Prevalence Study Final Report*)
- 37% of seniors report that they are currently being pitched by people calling or mailing them asking for money. (*Investor Protection Trust Elder Fraud Survey, 2010*)
- One out of every five people over the age of 65 has been victimized by financial fraud. (*Investor Protection Trust Elder Fraud Survey, 2010*)

Costs of Exploitation

- Elders will lose a minimum of \$2.9 billion annually due to financial abuse and exploitation. (The MetLife Study of Elder Financial Abuse, 2011)
- 5 million older Americans are financially exploited every year (How Criminals Steal \$37 Billion a Year from America's Elderly, Bloomberg, May 3, 2018)
- Elder financial abuse and fraud costs older Americans as much as \$36.5 billion per year. (NCOA, 2017)
- The New York State Office of Children and Family Services published a study in June 2016 on the Cost of Financial Exploitation which found losses in New York alone could be as high as \$1.5 billion



We need financial
services to be part of
the solution.

***FI Provisions
Relating to
Financial
Exploitation of a
Vulnerable or
Senior Adult***

*(Sections 8-2901 to
8-2903)*

Definitions

- Financial exploitation (8-2901(3))
- Financial institution (8-2901(4))
- Senior adult (28-366.01)
- Vulnerable adult (28-371)
- Transaction (8-2901(7))

***FI Provisions
Relating to
Financial
Exploitation of a
Vulnerable or
Senior Adult***

(Sections 8-2903)

Reporting

- Voluntary reporting to NDBF or law enforcement of a reasonable belief of financial exploitation of a vulnerable or senior adult

***FI Provisions
Relating to
Financial
Exploitation of a
Vulnerable or
Senior Adult***

(Sections 8-2901(3))

Hold Transactions

- Reasonable belief there is financial exploitation of a vulnerable or senior adult
- FI may delay or refuse a transaction with or involving a vulnerable or senior adult
- Delay or refuse a withdrawal or disbursements of funds
- Prevent a change in ownership
- Prevent a transfer of funds to another party
- Refuse to comply with instructions from an agent or POA
- Prevent a change in the designation of beneficiaries

***FI Provisions
Relating to
Financial
Exploitation of a
Vulnerable or
Senior Adult***

(Section 8-2901(4)(5))

Duration of Hold

- Expires the sooner of:
 - 30 business days
 - Financial Institution determines that the transaction will not result in financial exploitation
 - Termination by court order
- Unless otherwise directed by court order, financial institution may extend the hold upon a reasonable belief that the financial exploitation will continue

FI Provisions Relating to Financial Exploitation of a Vulnerable or Senior Adults

(Section 8-2901(3))

Notifications to 3rd Parties

- Financial institution may notify any third party reasonably associated with the vulnerable or senior adult
- Includes:
 - Parent, spouse, adult child, sibling, other known family member or close associate
 - Authorized contact
 - Co-owner, additional authorized signatory, or beneficiary
 - Attorney in fact, trustee, conservator, guardian, other fiduciary
 - Attorney known to represent or have represented the adult
 - May choose not to notify any third party if the financial institution reasonably believes the party is engaged in financial exploitation of the adult or if requested by law enforcement

***FI Provisions
Relating to
Financial
Exploitation of a
Vulnerable or
Senior Adult***

***(Sections 8-2901 to
8-2903)***

Qualified Immunity

- Applies to the financial institution, bank holding company, employees, agents, officers, and directors
- Reasonable belief
- Civil, criminal, or administrative liability for actions taken in compliance with these provisions

Nebraska Protection of Vulnerable Adults from Financial Exploitation Act

(Section 8-2905)

Definitions

- Agencies – NDBF and DHHS APS
- Financial exploitation
- Eligible Adult
 - Senior Adult (28-366.01)
 - Vulnerable Adult (28-371)
- Qualified Person
 - Broker-dealer
 - Investment adviser
 - Agent
 - Investment adviser representative
 - Person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser

Nebraska Protection of Vulnerable Adults from Financial Exploitation Act

*(Section 8-2905 to
8-2909)*

Reporting

- Voluntary reporting to NDBF or DHHS APS of a reasonable belief of financial exploitation of a vulnerable or senior adult

Nebraska Protection of Vulnerable Adults from Financial Exploitation Act

(Section 8-2908)

Hold Transactions and Disbursements

- Reasonable belief there is financial exploitation of a vulnerable or senior adult after initiating an internal review
- Within 2 business days, the IA or BD
 - Provides written notification to all parties on the account unless such party is reasonably believed to be engaged in the financial exploitation
 - Notify NDBF and DHHS APS
- Continue the internal review

Nebraska Protection of Vulnerable Adults from Financial Exploitation Act

(Section 8-2905)

Duration of Hold

- Expires the sooner of:
 - 15 business days unless extended an additional 15 business at request of NDBF or DHHS APS (total 30 business days)
 - BD or IA that the transaction will not result in financial exploitation
 - Termination by court order or the agencies
- Court may extend the hold or order other protective relief on the petition of the agencies, the BD or IA, or other interested party

Nebraska Protection of Vulnerable Adults from Financial Exploitation Act

(Section 8-2907)

Notifications to 3rd Parties

- Upon a reasonable belief, the qualified person may notify
 - Any 3rd party previously designated by the adult (the Trusted Contact)
 - Any person permitted to receive notification under applicable law
 - Any person permitted to receive notification under customer agreement
- Notification may not be made to any 3rd party suspected of financial exploitation or other abuse of the adult

Nebraska Protection of Vulnerable Adults from Financial Exploitation Act

(Section 8-2909)

Record Sharing

- Provides access to records of the financial exploitation to:
 - DHHS APS
 - Other agencies charged with administering state adult protective services laws
 - Law enforcement
- Records include:
 - Any records relevant to the suspected financial exploitation
 - Current and historical records
- Records made available under the act shall not be considered public records

Nebraska Protection of Vulnerable Adults from Financial Exploitation Act

(Section 8-2909)

Qualified Immunity

- Applies to any qualified person (BD, IA, agents, IARs, and supervisory, compliance, and legal personnel)
- Good faith and exercising reasonable care
- Civil or administrative liability for actions taken in compliance with the act

Is your financial firm asking you for a TRUSTED CONTACT?

There are a number of very important reasons to give your financial firm the name of someone you trust, and FINRA, NASAA and the SEC urge you to consider the request.

WHAT IS IT?

A "trusted contact" is a person you authorize your financial firm to contact in limited circumstances.

WHO SHOULD HAVE ONE?

We suggest a trusted contact for anyone who has an investment account.

How would having a trusted contact help me?

Maybe your investment professional needs to get in touch with you but can't when:

You are traveling

There is a natural disaster

There is a concern about fraud

You are having a health issue

Your trusted contact **CANNOT** make trades in your account

Your trusted contact **CANNOT** make decisions about your account

Being a trusted contact **DOES NOT** make them a power of attorney, legal guardian, trustee or executor

A trusted contact is someone who can help your financial firm help you, if needed. Add one today!

finra.org/trustedcontact

SENIOR SAFE ACT FACT SHEET

May 23, 2019

Introduction

The Senior Safe Act became federal law on May 24, 2018.¹ The Senior Safe Act does not mandate any action by financial institutions and regulators. However, for financial institutions and certain eligible employees (discussed below), affiliated persons, and associated persons ("eligible employees"), who satisfy its requirements, the Senior Safe Act provides immunity from liability in any civil or administrative proceeding for reporting potential exploitation of a senior citizen. As an example, this immunity can be helpful when a firm wants to report potential exploitation but fears that the report could violate a privacy requirement. This Fact Sheet provides general information regarding the Senior Safe Act with the goal of educating financial institutions and employees about the benefits of the Act.²

What is the Senior Safe Act?

The Senior Safe Act protects "covered financial institutions"³ – which include investment advisers, broker-dealers, and transfer agents – and their eligible employees, from liability in any civil or administrative proceeding in instances where those employees make a report about the potential exploitation of a senior citizen (defined as not younger than 65 years) to a covered agency.⁴ The immunity established by the Senior Safe Act is provided on the condition that (1) certain employees (discussed below) receive training on how to identify and report exploitative activity against seniors before making a report, and (2) reports of suspected exploitation are made "in good faith" and "with reasonable care." This immunity applies to eligible employees and firms, but the requirements differ slightly, as discussed below.

The inspiration for the Senior Safe Act was Maine's SeniorSafe training program, an initiative launched in 2014 by the Maine Council on Elder Abuse Prevention that is designed to train financial professionals to detect and report cases of suspected senior financial abuse.

¹ The Senior Safe Act, which was included as Section 303 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, was signed into law on May 24, 2018.

² This document should not be construed as providing legal advice.

³ The Senior Safe Act defines the term "covered financial institution" as credit unions, depository institutions, investment advisers, broker-dealers, insurance companies, insurance agencies, and transfer agents.

⁴ The Senior Safe Act defines the term "covered agency" to include a state financial regulatory authority (including a state securities regulator or law enforcement authority and a state insurance regulator); a state or local adult protective services agency; the SEC; an SEC-registered national securities association (e.g., FINRA); a federal law enforcement agency; or any Federal agency represented in the membership of the Financial Institutions Examination Council.

BSA E-Filing System

Financial Crimes Enforcement Network

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UPDATE: New User Interface for Registered BSA E-Fileers

About BSA E-Filing

The BSA E-Filing System supports electronic filing of Bank Secrecy Act (BSA) forms (either individually or in batches) through a FinCEN secure network. BSA E-Filing provides a faster, more convenient, more secure, and more cost-effective method for submitting BSA forms. [Learn more about BSA E-Filing here.](#)

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Implementation

- Ongoing training and outreach for industry
- DHHS APS training of NDBF staff
- Developing internal referral procedures
- Is it working? **YES!**
 - Firms are using their hold and notification authority
 - Actively referring reports to DHHS APS Hotline
 - Cease and Desist Order resulting from a report



Questions?

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